



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: JUNE 05, 2023

IN THE MATTER OF:

Appeal Board No. 629121 A

PRESENT: RANDALL T. DOUGLAS, MEMBER

The claimant applied to the Appeal Board pursuant to Labor Law § 534 for a

reopening and reconsideration of Appeal Board No. 627322, filed March 27, 2023, which reversed the decision of the Administrative Law Judge and sustained the initial determination ruling the claimant not entitled to receive benefits, effective October 25, 2021, on the basis that the claimant was unable to file a valid original claim pursuant to Labor Law § 527 using

either the basic base period or alternate base period because the claimant was not paid at least \$2,700 in one calendar quarter during the base period.

Upon consideration of the application to reopen, after due notice to the parties, the Board has decided to reopen and reconsider its decision.

The Board makes the following:

**FINDINGS OF FACT:** The claimant filed a new claim for benefits on October 31, 2021, effective October 25, 2021, establishing a basic base period of the third quarter of 2020 through the second quarter of 2021 (July 1, 2020 through June 30, 2021) and an alternate base period of the fourth quarter of 2020 through the third quarter of 2021 (October 1, 2020 through September 30, 2021).

In the 3rd quarter of 2020, the claimant had earnings of \$220.00 from Top Shelf Staffing.

In the 4th quarter of 2020, the claimant had earnings of \$875.75: \$774.50 from

GEP Cencast and \$101.25 from GEP Cenex.

In the 1st quarter of 2021, the claimant had earnings of \$712.50: \$427.50 from Elevate Entertainment Payroll; \$225 from Entertainment Casting; and \$60.00 from Sessions Payroll.

In the 2nd quarter of 2021, the claimant had earnings of \$2,341.75: \$155.00 from GEP Cenex; \$897.00 from Elevate Entertainment Payroll; \$751.25 from Media Services Payroll; and \$538.50 from Sessions Payroll.

In the 3rd quarter of 2021, the claimant had earnings of \$1,166.25 from Top Shelf Staffing

On November 18, 2021, the claimant was mailed a monetary determination which indicated that the claimant did not have the required employment and earnings to establish an unemployment insurance claim because he did not have earnings of at least \$2,700 in any one calendar quarter of his base period and indicating that the claimant's base period employment with an individual, AS, could not be used to establish entitlement pursuant to Labor Law Section 511 because the claimant was not an employee of AS.

On December 24, 2021, the claimant submitted a request for reconsideration contending that in the second quarter of 2021 he had earned \$1,114.69 from AS and \$50.00 from another individual, SIR.

On November 18, 2022, the claimant was mailed a monetary determination which indicated that he had \$4,195 total wages in the basic base period of from July 1, 2020 through June 30, 2021, with high quarter wages of \$2,611.75, and indicating that the claimant's base period employment with an individual, AS, could not be used to establish entitlement pursuant to Labor Law Section 511 because the claimant was not an employee of AS.

The monetary determination in this matter was mailed to the claimant on May 16, 2023. On May 27, 2022, the claimant requested a hearing regarding the monetary determination mailed on May 16, 2023 and contended that the Department of Labor never investigated earnings that the claimant had from gardening jobs he performed for an individual, AS.

On August 22, 2022, the Department of Labor mailed a questionnaire to the claimant regarding additional employment and earnings that the claimant

contended he had during the basic and alternate base periods. The claimant completed the questionnaire on August 30, 2022.

On November 2, 2022, the Department of Labor sent a secure message to the claimant with additional questions regarding the contended employment with AS. The secure message indicated that if the claimant did not respond by the close of business on November 4, 2022, a determination would be made with the information on file. A monetary determination was mailed to the claimant on November 18, 2022, indicating that base period employment with AS could not be used to establish entitlement pursuant to Section 511 of the New York State Unemployment Insurance Law because it was determined that the claimant was not an employee of AS, as the claimant did not respond to additional requests for information regarding the nature of the contended employment.

At the telephone conference hearing held on December 29, 2022, the Commissioner of Labor representative indicated that the determination issued on November 18, 2022 had been withdrawn.

OPINION: The credible evidence fails to establish that the claimant did not have earnings of at least \$2,700 in a single quarter during either the basic base period or the alternate base period as indicated in the initial determination. This case is similar to Appeal Board No. 614240. In that case, the Department of Labor had not considered certain earned remuneration when determining whether the claimant was able to file a valid original claim. As a result, the Board indicated that the determinations finding the claimant ineligible to file a valid original claim could not be sustained. In addition, as the claimant was otherwise eligible for at least a portion of

the period at issue, the Board referred the matter back to the Department of Labor for investigation and determination on whether the additional remuneration earned by the claimant made him eligible to file a valid original claim. Although there had been a monetary determination issued in November 2022 which referenced this employment, such determination had been withdrawn and is not the subject of the matter before us. Therefore, as the Department of Labor had not considered remuneration earned from AS or from SIR when determining whether the claimant was able to file a valid original claim, we conclude that the initial determination at issue cannot be sustained. As the claimant would otherwise be eligible for benefits, the matter is referred back to the Department of Labor for investigation and determination as to whether additional remuneration earned by the claimant, including, but not limited to,

services performed for AS and SIR, makes the claimant eligible to file a valid original claim.

DECISION: The decision of the Appeal Board is rescinded.

The decision of the Administrative Law Judge is affirmed.

The initial determination, ruling the claimant not entitled to receive benefits, effective October 25, 2021, on the basis that the claimant was unable to file a valid original claim pursuant to Labor Law § 527 using either

the basic base period or alternate base period because the claimant was not paid at least \$2,700 in one calendar quarter during the base period, is overruled.

The matter is referred back to the Department of Labor for investigation and determination as to whether the claimant is eligible to file a valid original claim based upon additional remuneration earned by the claimant in the basic base period or the alternate base period, including, but not limited to, services performed for AS and SIR.

RANDALL T. DOUGLAS, MEMBER